

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent No. 7,435,792)	
)	
Inventor: Laurent COEN et al.)	Group Art Unit: 1632
)	
Issued: October 14, 2008)	Examiner: Shin Lin Chen
)	
For: HYBRID PROTEINS THAT)	
MIGRATE RETROGRADELY AND)	
TRANSYNAPTICALLY INTO THE)	Confirmation No.: 7062
CNS)	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**PETITION UNDER 37 C.F.R. § 1.183 FOR WAIVER
OF THE REQUIREMENT UNDER 37 C.F.R. § 1.705(d)**

Pursuant to 37 C.F.R. § 1.183, Patentee petitions the Commissioner to waive the requirements of 37 C.F.R. § 1.705(d) that any request for reconsideration of the patent term adjustment indicated in an issued patent be filed within two months of the date the patent issues. The required fee of \$400.00 for the petition under 37 C.F.R. § 1.183 is enclosed.

The U.S. Patent Trademark Office (PTO) issued the above-referenced U.S. Patent No. 7,435,792 (the '792 patent) on October 14, 2008, with a patent term adjustment (PTA) of 512 days. Subsequently, on September 30, 2008, U.S. District Court for the District of Columbia ruled in *Wyeth v. Dudas* that the PTO had made an error in the manner it determined PTA. Specifically, the Court's decision relates to situations in which separate time

periods of PTA accrue due to PTO examination delay and those time periods do not overlap. The Court ruled that in such situations, the PTA should be determined as the sum of the term adjustments of the respective separate time periods, rather than the greater one of the term adjustments, the latter practice being the PTO's manner of PTA determination used to date.

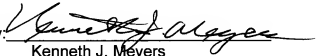
Patentee requests waiver of Rule 1.705(d) to permit filing and consideration of the accompanying Determination of Patent Term Adjustment - Post Grant, in which patentee requests a change in the PTA based on determination in a manner consistent with the Court's decision referred to above.

This Petition is accompanied by the required petition fee of \$400.00, as set forth in 37 C.F.R. § 1.17(f). If there are any other fees due in connection with the filing of this Petition, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: November 12, 2008

By: 
Kenneth J. Meyers
Reg. No. 25,146

Enclosures

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Sir:

DETERMINATION OF PATENT TERM ADJUSTMENT - POST GRANT

The Office issued the subject U.S. Patent No. 7,435,792 (the '792 patent) with a patent term adjustment of 512 days.

The Application was filed on March 26, 2001. The first Office Action on the merits was dated September 26, 2002, creating a U.S. Patent and Trademark Office (PTO) delay of 123 days. A response to the September 26, 2002, Office Action was filed on October 24, 2002. The second Office Action on the merits was dated December 16, 2002. A response to the December 16, 2002, Office Action was filed on April 10, 2003, creating an Applicant delay of 23 days. A Final Office Action was dated June 4, 2003. A response to the June 4, 2003 Final Office Action was filed August 29, 2003. A Notice of Appeal was filed on November 4, 2003, creating an Applicant delay of 61 days. A Decision on Appeal reversing Examiner was dated October 27, 2005,

creating a U.S. Patent and Trademark Office (PTO) delay of **723 days**. A Non-Final Office action was dated December 25, 2005. A response to the December 25, 2005, Office Action was filed on June 28, 2006, creating an Applicant delay of 91 days. A Request for Continued Examination was filed on February 27, 2007, creating an Applicant delay of 91 days.

The patent application was allowed on March 21, 2008, and the issue fee was paid on June 19, 2008. The '792 patent issued on October 14, 2008. The three year pendency date for determination of patent term adjustment is **February 27, 2007** (date RCE filed), thereby creating a PTO delay of 512 days.

In view of the decision of the Federal District Court for the District of Columbia in *Wyeth v. Dudas* on September 30, 2008, patentee submits it is entitled to a total patent term adjustment of 1,358 days which is the sum of 846 days of patent term adjustment due to exceeding three year pendency and 512 days due to PTO delay in prosecution.

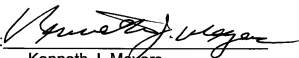
Customer No. 22,852
Attorney Docket No. 03495.0174-01

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please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

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